



Legal Analysis of Judges' Considerations and Application of Articles in Narcotics Crimes Based on Comparative Studies (Decision Number 1173/Pid.Sus/2024/Pn Medan, Decision Number 1700/Pid.Sus/Pn Medan, and Decision Number 2185/Pk/Pid.Sus/2025)

Johannes M Turnip ^{1*}, Felix Adrian Sembiring ¹

¹ PUI-PT Criminal Law, Universitas Prima Indonesia, Medan, Sumatera Utara, Indonesia

* Corresponding author: johannestoernhip@gmail.com

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Abstract: This study aims to analyze the regulation of narcotics crimes in Indonesian law, the application of articles in narcotics case decisions, and the judges' considerations in issuing verdicts. The method used is normative juridical with a statutory approach and a case approach through an analysis of three court decisions. The research results show that the regulation of narcotics crimes is dualistic, regulated by Law Number 35 of 2009 as *lex specialis* and the Criminal Code of 2023 as *lex generalis*. In practice, judges tend to apply repressive articles, such as Articles 114 and 112, with an emphasis on possession and distribution, even when there are indications that the defendant is a drug abuser. Furthermore, there are differences in judges' considerations in assessing the role and level of involvement of the defendant. These differences create disparities in sentencing in narcotics cases. Therefore, clearer guidelines are needed for judges to achieve substantive justice, including considering a rehabilitation approach for drug abusers.

Keywords: Narcotics Crimes; Judge's Considerations; Disparity in Sentencing; Application of Articles; Legal Certainty

Introduction

Narcotics play a vital role in medicine, particularly in pain relief and as anesthesia. However, the use of narcotics outside of medical use and without proper supervision can have extremely dangerous consequences for both individuals and society. Drug abuse can lead to dependence (addiction), physical and mental disorders, and potentially lead to other criminal acts.¹

Legally, the definition of narcotics is regulated in Law Number 35 of 2009 concerning Narcotics. Article 1, number 1, states that narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of sensation, reduce or eliminate pain, and can lead to dependence.²

This definition demonstrates that narcotics have two sides: they are beneficial substances for health, but they are also dangerous if abused. Law No. 35 of 2009 classifies narcotics into three groups based on their potential for addiction and their medical benefits.

Narcotics in Indonesian law are divided into three groups, namely Group I which is only used for scientific development and has a very high potential to cause dependence ³, such as marijuana, heroin, and cocaine; Class II which is used for certain treatments with high dependency potential, such as morphine and pethidine; and Class III which is widely used in therapy with low dependency potential,

¹ Mardani, *Drug Abuse in the Perspective of Islamic Law and National Criminal Law*, Jakarta: RajaGrafindo Persada, 2008, p. 12.

² Indonesia, Law Number 35 of 2009 concerning Narcotics, Article 1 number 1.

³ *Ibid.*, Attachments and provisions regarding Group I.

such as codeine⁴. Prohibition regulations and sanctions are regulated in Law Number 35 of 2009 concerning Narcotics, specifically Articles 111, 112, 114, and 127 which regulate the possession, distribution, and misuse of narcotics for personal use which can be directed towards rehabilitation.⁵ This shows that Indonesian law does not only emphasize criminalization, but also a rehabilitative approach for users. Drug abuse is a serious problem because it threatens the younger generation and national stability, so that judges have an important role in making decisions based on trial facts and valid evidence. Based on the background above, the formulation of the problem in this study includes how the regulation of narcotics crimes in various laws and regulations, how the application of articles to perpetrators of narcotics crimes in the decisions studied, and how the comparison of judges' considerations in deciding narcotics crime cases in these decisions.

Method

The research method used in this study is normative legal research with a literature review nature that emphasizes the use of secondary data in the form of primary, secondary, and tertiary legal materials. The approach used includes a legislative approach and a case approach through an analysis of various regulations related to narcotics crimes, such as Law Number 35 of 2009 concerning Narcotics, the Criminal Code, the Criminal Procedure Code, and court decisions that are the object of the research.⁶ The collection of legal materials is carried out through literature studies by reviewing relevant laws and regulations, books, journals, and scientific works, then analyzed qualitatively through interpretation and systematic compilation of legal materials to answer research problems.⁷

Findings and Discussion

Regulation of Narcotics Crimes in Legislation

Drug crimes in Indonesia are comprehensively regulated under Law Number 35 of 2009 concerning Narcotics, which is the *lex specialis* in the Indonesian criminal law system. This law not only regulates prohibitions and criminal sanctions but also accommodates a rehabilitative approach for drug abusers.

The law classifies narcotics into three categories: Schedule I, Schedule II, and Schedule III, each with varying levels of potential for addiction and medical uses. This classification serves as the basis for determining the severity of criminal sanctions.

Furthermore, this law regulates various forms of prohibited acts, including:

1. Possessing, storing and controlling narcotics (Articles 111 and 112);
2. Producing, importing, exporting or distributing narcotics (Article 113);
3. Selling, buying, acting as an intermediary in the sale and purchase of narcotics (Article 114);
4. Using narcotics for oneself (Article 127).

These provisions demonstrate that narcotics criminal law encompasses the entire chain of illicit drug trafficking, from producers to users. According to Siswanto Sunarso, this broad criminalization is intended to close all loopholes in drug trafficking, but on the other hand, it has the potential to lead to overcriminalization if not implemented carefully.⁸

In addition, the criminal punishment system in this law adopts a double track system, namely combining criminal sanctions with rehabilitation measures.⁹

⁴ Ibid., provisions regarding Group II.

⁵ Ibid., provisions regarding Group III.

⁶ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press.

⁷ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press.

⁸ Siswanto Sunarso, *Law Enforcement of Psychotropic Drugs in the Study of Legal Sociology*, (Jakarta: RajaGrafindo Persada, 2012), p. 45.

⁹ Mardjono Reksodiputro, *Criminology and the Criminal Justice System*, (Jakarta: UI Press, 2007), p. 112.

This is evident in Article 54, which requires drug addicts and victims of drug abuse to undergo medical and social rehabilitation. In its implementation, this regulation is also inseparable from the provisions in:

1. Criminal Code, which regulates the general principles of sentencing;
2. The Criminal Procedure Code, which regulates the mechanisms of evidence and the criminal justice process.

Thus, the regulation of narcotics crimes in Indonesia demonstrates a comprehensive approach, which is not only repressive, but also rehabilitative, with the aim of protecting society while simultaneously rehabilitating victims of narcotics abuse.

Furthermore, in the development of national criminal law, regulations regarding narcotics crimes are also included in Law Number 1 of 2023 concerning the Criminal Code (KUHP), as part of efforts to codify and harmonize criminal law in Indonesia. This law specifically regulates narcotics crimes in the following articles:

1. Possession, storage, control or provision of narcotics without the right as referred to in Article 609;
2. Production, import, export and distribution of narcotics (Article 610);
3. Sales, purchases and intermediaries in the sale and purchase of narcotics (Article 611);
4. Provisions regarding increasing criminal penalties in certain circumstances (Article 612)

Application of Articles to Narcotics Crime Perpetrators in the Examined Decisions

Based on the results of research on Decision Number 1173/Pid.Sus/2024/PN Medan, Decision Number 1700/Pid.Sus/2025/PN Medan, and Decision Number 2185/PK/Pid.Sus, it is known that all defendants were sentenced under Article 114 of Law Number 35 of 2009 concerning Narcotics. Article 114 regulates the acts of offering for sale, selling, buying, receiving, acting as an intermediary in the sale and purchase of narcotics, exchanging, or handing over narcotics. Thus, the application of this article shows that the judge qualified the defendants' actions as part of the illicit trafficking of narcotics.

Although all three decisions use the same article, there are variations in its application based on the facts of the trial. These variations include:

a. Interpretation of the Element of "Becoming an Intermediary"

The judges in each ruling took a different approach in interpreting the element of "acting as an intermediary in the sale and purchase of narcotics." In Decisions No. 2185/PK/Pid.Sus/2025 and No. 1173/Pid.Sus/2024/PN Medan, the defendant's role as a liaison or facilitator was sufficient to fulfill this element, even though his involvement was not dominant.

b. Assessment of the Defendant's Role

Based on the three decisions, it can be seen that although normatively the defendants were charged with Article 114 of Law Number 35 of 2009 concerning Narcotics which indicates a role as an active intermediary, in fact there were differences in the level of involvement.

Decisions No. 2185/PK/Pid.Sus/2025 and No. 1173/Pid.Sus/2024/PN Medan indicate an active intermediary role, while Decision No. 1700/Pid.Sus/2025/PN Medan indicates that the defendant only acted as an assistant or had minimal involvement. This indicates a potential disparity in the application of the articles to the level of the perpetrator's role in narcotics crimes.

c. Influence of Evidence

The quantity and type of narcotics found are also important factors in determining the severity of the crime. The greater the amount of evidence, the heavier the sentence imposed by the judge. In Decision Number 2185/PK/Pid.Sus/2025, the evidence in the form of one package of methamphetamine with a net weight of 1.92 grams, one empty plastic clip, and one electronic scale strongly indicated drug trafficking, especially given the presence of scales commonly used in

distribution activities. This generally correlates with a heavier sentence because it indicates a more active role in the distribution chain.

Meanwhile, in Decision Number 1173/Pid.Sus/2024/PN Medan, two plastic clips containing methamphetamine with a net weight of 1.21 grams were found, along with a plastic pipette shovel as an aid. This also indicates involvement in distribution, but on a relatively smaller scale compared to the previous decision. Therefore, the sentence imposed in this case generally tends to be lighter when compared to cases with greater evidence or supported by more complex distribution equipment.

Meanwhile, in Decision Number 1700/Pid.Sus/2025/PN Medan, although the number of packages reached eleven plastic clips, the total weight was relatively smaller, namely 1.06 grams, thus indicating that although there were indications of division into several packages, the level of seriousness of the crime was assessed as lower in terms of net quantity. This condition generally implies a lighter sentence compared to cases involving greater narcotics weight, even though the number of packages was greater. According to Andi Hamzah, the application of criminal articles must be based on the careful fulfillment of the elements of the crime to avoid errors in qualifying the defendant's actions.¹⁰

d. Critical Analysis

Based on a comparison of the three decisions, an important question arises as to whether the sentences imposed are proportional or indicate disparity in sentencing. Theoretically, the principle of proportionality in criminal law requires that the sentence imposed be commensurate with the level of culpability (*schuld*) and the level of danger (*daad*) of the defendant's actions.

In terms of net weight, Decision Number 2185/PK/Pid.Sus/2025 contains the largest quantity (1.92 grams), along with supporting equipment in the form of an electronic scale, indicating an active role in distribution. Therefore, if this decision carries the heaviest penalty, it can be considered proportional, reflecting the severity of the situation.

Comparison of Judges' Considerations in Deciding on Narcotics Crimes

a. Decision Number 2185/PK/Pid.Sus/2025

Legal Considerations: The Supreme Court, in its judicial review, considered that the district court (*judex facti*) had erred in its assessment of the trial facts. This error lay in its failure to consider mitigating circumstances, namely the relatively small amount of narcotics and the convict's non-recidivist status.

In addition, the Supreme Court considered that the previously imposed sentence was too severe and did not reflect a sense of justice, thus potentially creating disparity in sentencing for similar cases involving almost the same amount of narcotics. Based on the trial facts, the Convict was proven to have purchased and resold narcotics in the form of crystal methamphetamine, thus fulfilling the elements of Article 114 paragraph (1) of the Narcotics Law.

Verdict:

1. Granting the Convict's application for judicial review;
2. Canceling the previous Medan District Court Decision;
3. Declaring that the convict has been legally and convincingly proven guilty of committing the crime of selling narcotics;

Imposing a sentence:

1. Prison: 3 (three) years
2. Fine: Rp. 1,000,000,000,-
3. Subsidiary: 3 (three) months imprisonment
4. Determining that evidence be confiscated/destroyed;

¹⁰ Andi Hamzah, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2010), p. 89.

b. Decision Number 1173/Pid.Sus/2024/PN Medan

Implications of Legal Considerations, the Panel of Judges considered that the Defendant was proven to have committed the act of selling or acting as an intermediary in the sale and purchase of narcotics based on witness statements, the Defendant's confession, and evidence in the form of 1.21 grams of crystal methamphetamine.

In addition, it was discovered that the Defendant obtained narcotics from another party (DPO) and resold them to make a profit, so that the element of "selling or acting as an intermediary" was fulfilled. Thus, the Defendant's actions fulfilled the elements of Article 114 paragraph (1) of the Narcotics Law.

The verdict states that the defendant is proven guilty of committing a narcotics crime; Imposing a sentence:

1. Prison: 6 (six) years 6 (six) months
2. Fine: Rp. 1,000,000,000,-
3. Subsidiary: 3 (three) months imprisonment
4. Determining that evidence be destroyed;
5. Money confiscated for the state;

c. Decision Number 1700/Pid.Sus/2025/PN Medan

Implications of Legal Considerations. The Panel of Judges considers that the Defendant was proven to have committed the act of selling or acting as an intermediary in the sale and purchase of narcotics based on:

1. witness statements,
2. Defendant's confession,
3. as well as evidence in the form of 11 packages of crystal methamphetamine (1.06 grams).

The defendant is also known to have been carrying out narcotics buying and selling activities for some time and making a profit, thus indicating the presence of elements of distribution.

Verdict:

Declaring the Defendant guilty of committing a narcotics crime;

1. Sentencing him to 5 (five) years and 6 (six) months in prison
2. imprisonment
3. A fine of Rp. 200,000,000
4. subsidiary (4) four months

Set:

1. The period of detention is deducted from the sentence;
2. The defendant remains in custody;
3. The evidence was destroyed;
4. Money confiscated for the state;

a) Sociological Considerations

The judge considers the following aspects:

- 1) Background of the accused;
- 2) Economic conditions;
- 3) The impact of actions on society.

In some decisions, these factors influence the severity of the sentence imposed.

b) Philosophical Considerations

Philosophically, sentencing of drug offenders should be based on the principle of proportionality, which demands a balance between the level of culpability and the sanctions imposed. However, in judicial practice, as seen in Decisions No. 2185/PK/Pid.Sus/2025, No. 1173/Pid.Sus/2024/PN Medan, and No. 1700/Pid.Sus/2025/PN Medan, disparities in sentencing for offenders with relatively similar roles and amounts of evidence are still found.

This shows that the application of substantive justice has not been fully realized consistently in the criminal justice system in Indonesia, which then becomes the aim of punishment, namely:

- 1) Provides a deterrent effect;
- 2) Protecting the community;
- 3) Realizing justice.

According to Satjipto Rahardjo, the law not only aims to provide certainty but must also prioritize substantive justice. Comparative Analysis of Role Classification in Three Decisions:

a) Decision No. 2185/PK/Pid.Sus/2025

Role: Active intermediary (actively connecting and involved in transactions)

Characteristics of involvement:

- 1) Not only knowing, but playing a role in the occurrence of criminal acts
- 2) There is a real contribution in the distribution chain/action
- 3) Usually have intense communication or direct involvement

Legal implications:

- 1) Seen as an important actor (not just a helper)
- 2) Approaching the category of joint perpetrators (medepleger)

b) Decision No. 1173/Pid.Sus/2024/PN Medan

Role: Helping (medeplichtige)

Characteristics of involvement:

- 1) Not being the main driver
- 2) Providing assistance (facilitation, means, or support)
- 3) Not controlling the course of crime

Legal implications:

- 1) Subject to a lighter sentence than the main perpetrator
- 2) Regulated in the concept of assistance (Article 56 of the Criminal Code)

c) Decision No. 1700/Pid.Sus/2025/PN Medan

Role: Minimal involvement

Characteristics of involvement:

- 1) Very limited role
- 2) Does not have significant control or influence
- 3) Sometimes just following or knowing without making any significant contribution

Legal implications:

- 1) Seen as the perpetrator with the lightest role
- 2) Can be categorized as passive participant or peripheral role

Conclusion

Based on the results of research on Decision Number 1173/Pid.Sus/2024/PN Medan, Decision Number 1700/Pid.Sus/2025/PN Medan, and Decision Number 2185/PK/Pid.Sus/2025, it can be concluded that the regulation of narcotics crimes in Indonesia is specifically regulated in Law Number 35 of 2009 concerning Narcotics as *lex specialis* which is supported by the 2023 Criminal Code as *lex generalis* and other related regulations. The application of articles in the three decisions tends to be oriented towards criminalization through Article 112 and Article 114, even though there are indications that the defendant is a user, while the judge's considerations at the first level are more focused on fulfilling formal legal elements, while at the level of judicial review, substantive justice and the condition of the defendant are more considered, thus showing differences in the judge's approach which have an impact on the application of articles and criminal sanctions. Therefore, a clearer harmonization between related regulations is needed to avoid overlapping norms and provide legal certainty, and it is also necessary for law enforcement officers, especially prosecutors and judges, to be careful and consistent in applying the

articles by considering the aspects of evidence, role, intent, and level of involvement of the accused to avoid errors in qualifying criminal acts.

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